



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Stefan C. Passantino, Esq.
McKenna Long & Aldridge, LLP
1900 K Street, NW
Washington, DC 20006

SEP 18 2010

Re: MUR 6250

Ethan Hastert for Congress Committee and
Larry Nelson, in his official capacity as
treasurer, Ethan Hastert, Burnham Strategies
Group, LLC, Brad Hahn, J. Dennis Hastert

Dear Mr. Passantino:

By letters dated February 23, April 16 and April 20, 2010, the Federal Election Commission ("Commission") notified your clients, Ethan Hastert for Congress Committee and Larry Nelson, in his official capacity as treasurer (the "Committee"), Ethan Hastert, Burnham Strategies Group, LLC, Brad Hahn, and J. Dennis Hastert (collectively, "Respondents") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

Based on that complaint and on information provided by Respondents, on September 3, 2010, the Commission found there was no reason to believe that the Committee violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(b)(2). On the same date, the Commission found there was no reason to believe that Ethan Hastert violated 2 U.S.C. §§ 441a(f) and 441b(a), and there was no reason to believe that Burnham Strategies Group, LLC violated 2 U.S.C. §§ 441a(a)(1) and 441b(a). Also on the same date, the Commission found there was no reason to believe that either Brad Hahn or J. Dennis Hastert violated 2 U.S.C. § 441a(a)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Christine Gallagher, the attorney assigned to this matter at (202) 694-1598.

Sincerely,



Susan L. Lebeaux
Acting Deputy Associate General Counsel
for Enforcement

Enclosure: Factual and Legal Analysis for Ethan Hastert for Congress Committee and Larry Nelson, in his official capacity as treasurer, Ethan Hastert, Burnham Strategies Group, LLC, Brad Hahn, and J. Dennis Hastert

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

Respondents: Ethan Hastert for Congress Committee and MUR: 6250
Larry Nelson, in his official capacity as treasurer
Ethan Hastert
Burnham Strategies Group, LLC
Brad Hahn
J. Dennis Hastert

I. INTRODUCTION

This matter is based on a complaint filed with the Federal Election Commission ("the Commission") by Ion A. Zahm, *see* 2 U.S.C. § 437g(a)(1), alleging that Ethan Hastert for Congress Committee and Larry Nelson, in his official capacity as treasurer, ("the Committee") and Ethan Hastert, the candidate, may have received excessive in-kind contributions from Burnham Strategies Group, LLC; its partner, Brad Hahn; and J. Dennis Hastert, and may have received a possible prohibited corporate contribution from Burnham Strategies, when they allegedly received campaign consulting and media services from that company without charge or at less than its usual and normal charge in connection with Ethan Hastert's 2010 campaign for the U.S. House of Representatives in Illinois' 14th Congressional District. 2 U.S.C. §§ 441a(f) and 441b(a); 11 C.F.R. § 100.52(d)(1) and (2). In addition, the complaint alleges that Burnham Strategies Group, LLC; its partner, Brad Hahn; and J. Dennis Hastert made excessive in-kind contributions to the Committee and Ethan Hastert, and that Burnham Strategies possibly made a prohibited corporate contribution to the Committee and Ethan Hastert. 2 U.S.C. §§ 441a(a)(1) and 441b(a). The complaint further alleges that the Committee failed to disclose its receipt of the excessive in-kind contributions in its reports filed with the Commission in violation of 2 U.S.C. § 434(b)(2).

1 Based on the available information, including written responses from the respondents
2 denying the allegations, there is no information to indicate that the respondents may have
3 committed the violations alleged in the complaint. Accordingly, the Commission finds no reason
4 to believe that Ethan Hastert for Congress Committee and Larry Nelson, in his official capacity
5 as treasurer; Ethan Hastert; Burnham Strategies Group, LLC; Brad Hahn ; or J. Dennis Hastert,
6 violated the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with
7 the allegations in this matter.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Complaint and Response**

10 Complainant alleges that Burnham Strategies and Brad Hahn made, and the Committee
11 and Ethan Hastert received, an excessive in-kind contribution, and possibly a prohibited
12 corporate contribution from Burnham Strategies, in the form of campaign consulting and media
13 services without charge or at less than the usual and customary charge. These allegations are
14 based on information derived from two newspaper articles mentioned in the complaint.¹
15 Complaint, at 1 and 2. The first article in the DAILY HERALD reported that Burnham Strategies
16 was overseeing the campaign: "[t]hat firepower has netted Ethan Hastert about \$87,000 in
17 campaign contributions." According to the news article, Ethan Hastert "said he's pleased with
18 raising a little less than \$87,000 in about two weeks. The next step is getting out and talking to
19 voters and local leaders," *Hastert Gets Congressional Campaign in Full Swing Friday*,
20 DAILY HERALD by James Fuller, 7/21/09 (the "July 21 article").

¹ According to Dun & Bradstreet ("D&B") reports, Burnham Strategies Group, LLC is a limited liability company with two principals: Brad Hahn and David W. From. The company's Web site states that it is a professional election campaign, advocacy, and communications consulting firm, and its partners, Mr. Hahn and Mr. From, were staffers of former U.S. House Speaker J. Dennis Hastert. See <http://burnhamstrategies.com> accessed June 23, 2010. Former-speaker Hastert is the father of candidate, Ethan Hastert. See Response, dated May 4, 2010, at footnote 1.

1 The second article, also in the DAILY HERALD, reported that Mr. Hahn and Burnham
2 Strategies "initially thought they might help Ethan Hastert run his Congressional campaign," but
3 "the relationship ended with one news release and fielding a couple media calls." *Hastert*
4 *Campaign Won't Report Controversial Contribution*, DAILY HERALD by James Fuller, with
5 Daily Herald Politics and Projects Editor Joseph Ryan contributing, 1/21/10 (the "January 21
6 article"). According to the article, Mr. Hahn wrote a news release for the initial announcement
7 of the campaign and did not charge anything for it: "[s]o when Hahn wrote the news release,
8 [Hahn] said he did it because he knew Ethan and supported him. It wasn't to get paid." *Id.* "It
9 was a one-page news release,' Hahn said. 'I wouldn't even know what to charge.'" *Id.* The
10 news article reported that Mr. Hahn typically charges a fee to write a news release and field
11 media calls in his everyday profession, though the article did not mention the amount of his usual
12 charge. *Id.* Andrew Nelms, the Committee's spokesman, reportedly said that the Committee did
13 not see the need to report Mr. Hahn's work in contribution disclosure reports: "'Brad just did
14 that one news release in the very first days of the campaign,' Nelms said. 'There's never been
15 any work done since. It took him probably 10 minutes. He's never done any other work for
16 us.'" *Id.*

17 Complainant also alleges that the services provided by Brad Hahn to the Committee did
18 not constitute volunteer services, rather, his services were "made in contemplation of Burnham
19 Strategies being retained by Hastert to manage the campaign." Complaint, at 3. Based on these
20 allegations, complainant concludes that Burnham Strategies and Mr. Hahn made an excessive
21 in-kind contribution to the Committee and Ethan Hastert in violation of 2 U.S.C. § 441a(a)(1),
22 and that the Committee and Ethan Hastert received an excessive in-kind contribution from

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1 Burnham Strategies and Mr. Hahn and the Committee failed to disclose its receipt on its reports
2 filed with the Commission, in violation of 2 U.S.C. §§ 441a(f) and 434(b)(2). Complaint, at 3-4.

3 Complainant alternatively alleges that if Burnham Strategies, a limited liability company,
4 elects to be treated by the Internal Revenue Service as a corporation, then any contribution from
5 it to the Committee would be treated as a contribution from a corporation. 11 C.F.R.

6 § 110.1(g)(3). If so, the complaint alleges, Burnham Strategies made, and the Committee and
7 Ethan Hastert received, a prohibited corporate contribution by benefiting from the company's
8 campaign services without charge to the campaign, in violation of the Act. 2 U.S.C. § 441b(a).

9 Complainant further alleges that the former Speaker Hastert made, and the Committee
10 and Ethan Hastert received, an excessive in-kind contribution when he allegedly made
11 approximately \$30,000 in disbursements to Burnham Strategies for providing services to his
12 son's campaign. This allegation is also based on a news article mentioned in the complaint.
13 POLITICO reported that the former Speaker receives \$40,000 a month in taxpayer dollars to
14 maintain an office and cover his expenses (per a law that provides five years of benefits for
15 former speakers). *Former Speaker Gets Pricey Perks*, POLITICO, Jake Sherman and John
16 Bresnahan, 12/21/09. According to the news article, "House disbursement records show that the
17 office is spending an additional \$2,000 per month in taxpayer money on a consulting firm,
18 Burnham Strategies, that is run by several of Hastert's former staffers, including Hahn.
19 Altogether, the firm was paid \$30,000 through Sept. 30 of this year, records show." *Id.* The
20 complainant alleges that if former-Speaker Hastert retained Burnham Strategies to perform the
21 services for his son's campaign, then he may have made an excessive in-kind contribution to the
22 Committee and Ethan Hastert in violation of 2 U.S.C. § 441a(a)(1), and the Committee and
23 Hastert received an excessive in-kind contribution in violation of 2 U.S.C. § 441a(f), and the

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1 Committee also failed to disclose receipt of that in-kind contribution in violation of 2 U.S.C.
2 § 434(b)(2). Complaint, at 2 and 4.

3 The response jointly filed by counsel on behalf of all the respondents denies that
4 Burnham Strategies oversaw the campaign or that the Committee and Hastert received any
5 in-kind benefits from the company.² Response, dated May 4, 2010, at 2. The response contends
6 that the factual references in the complaint are drawn from "hearsay accounts of newspaper
7 articles," and "have absolutely no basis in fact." *Id.*, at 1. Specifically, respondents maintain
8 that the Commission should not investigate this matter because the complainant "seeks to
9 extrapolate from the potential that *if* certain facts as may be inferred from a newspaper article are
10 true, there is a *possibility* that a campaign finance violation *may* have occurred." *Id.* (Emphasis
11 in original). The response states that "even if" Brad Hahn assisted with the creation of a single
12 press release and responded to a couple of media calls, then that work constituted "incidental
13 volunteer activity" as defined by 11 C.F.R. § 100.74. *Id.*, at 2. Further, "even if" these volunteer
14 activities were performed at Mr. Hahn's place of work, the use of corporate facilities does not
15 constitute an in-kind contribution unless they are more than "incidental" (greater than one hour
16 per week or four hours per month). *Id.*; see also 11 C.F.R. § 114.9(a). In response to the
17 allegations that former-Speaker Hastert may have made an excessive in-kind contribution to the
18 Committee, the response contends that the congressionally-authorized expenditures by the
19 former Speaker are irrelevant, not based on any factual support, and should be "disregarded."
20 Response, dated May 4, 2010, at 2, footnote 1.

² We received two responses from respondents in this matter. The first response is filed on behalf of the Committee, its treasurer and Ethan Hastert dated April 1, 2010. The second is a combined response filed on behalf of all respondents dated May 4, 2010. Both responses are materially the same. For purposes of convenience, in this Factual and Legal Analysis we cite to the later response.

B. Legal Analysis

Candidates and political committees are prohibited from knowingly accepting a contribution made in excess of the contribution limitations set forth in the Act. 2 U.S.C. § 441a(f). The Act also prohibits candidates and political committees from knowingly accepting contributions from corporations made with their general treasury funds. 2 U.S.C. § 441b(a). The Act defines the term "contribution" as including "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, and the provision of any goods and services without charge or at a charge less than the usual and normal charge for such goods and services is considered a contribution. 11 C.F.R. § 100.52(d)(1). "Usual and normal charge for services" means the commercially reasonable rate prevailing at the time. 11 C.F.R. § 100.52(d)(2). The contribution limit during the 2009-2010 election cycle for the amount an individual may give to each candidate or candidate committee per federal election is \$2,400. *See* 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1. The Act prohibits corporations from using general treasury funds to make a contribution in connection with federal elections. 2 U.S.C. § 441b(a). Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of the Act and shall disclose, among other things, the total amount of all receipts including contributions received from persons other than political committees. 2 U.S.C. §§ 434(a) and 434(b)(2).

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1. Alleged Excessive In-Kind Contribution, and Possibly Prohibited Corporate Contribution, from Burnham Strategies to the Committee and Ethan Hastert

There is no information suggesting that Burnham Strategies, as a business entity, provided any services to the Committee or Ethan Hastert. The first news article mentioned in the complaint reporting that Burnham Strategies is "overseeing the campaign" is clarified in the second article mentioned in the complaint, which reports that the company ultimately decided not to oversee campaign. See January 21 article. Moreover, the response expressly denies the factual allegations that Burnham Strategies was overseeing Ethan Hastert's campaign. See Response, dated May 4, 2010, at 1 and 2; see also MUR 6023(John McCain 2008, *et al.*) (no reason to believe finding where the allegations in the complaint lacked sufficient facts to contradict the representations made in the response). Since it does not appear that Burnham Strategies, as a business entity, performed services for the Committee, it did not make an excessive in-kind contribution or a prohibited corporate contribution, even if the company elects to be treated by the Internal Revenue Service as a corporation. See 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g)(3). Consequently, Burnham Strategies Group, LLC did not make an excessive in-kind contribution or a prohibited corporate contribution to the Committee or Ethan Hastert in violation of 2 U.S.C. §§ 441a(a)(1) or 441b(a), and Ethan Hastert for Congress Committee and Larry Nelson, in his official capacity as treasurer, and Ethan Hastert did not receive, an excessive in-kind contribution or a prohibited corporate contribution from Burnham Strategies Group, LLC in violation of 2 U.S.C. §§ 441a(f) or 441b(a), and the Committee did not violate the applicable reporting requirements. See 2 U.S.C. § 434(b)(2).

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2. Alleged Excessive In-Kind Contributions from Brad Hahn and J. Dennis Hastert to the Committee and Ethan Hastert

It appears that any work Mr. Hahn did for the committee was volunteer work and would not be considered a contribution under the Act. Excluded from the definition of contribution is "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i) and 11 C.F.R. § 100.74. The complaint alleges that the work done by Mr. Hahn individually did not constitute volunteer services because the work was performed in contemplation of Burnham Strategies being retained to manage the campaign. *See* Complaint, at 3. There is no basis in the complaint for this allegation other than the news articles mentioned therein, and those articles ultimately reported that Burnham Strategies did not provide the services as alleged. However, based on our review of the news articles and the response, it appears that any work Mr. Hahn individually performed on behalf of the Committee was volunteer work. According to one of the news articles, Mr. Hahn performed the work because "he knew Ethan and supported him. It wasn't to get paid." *See* January 21 article. Moreover, it appears from that article that Mr. Hahn performed minimal services, (*e.g.*, writing one press release that "took him probably 10 minutes" and fielding "a couple" of media calls). *Id.* There is no information confirming whether Mr. Hahn used corporate facilities to perform these services. However, even if he did, it appears that his services were occasional, isolated, or incidental (*e.g.*, not exceeding one hour a week or four hours per month), and therefore would have met the safe harbor for use of corporate facilities by an individual volunteering for a federal election. *See* 11 C.F.R. § 114.9(a)(1) and (2). Thus, it appears that the services rendered by Mr. Hahn to the Committee constituted volunteer services and would not be considered a contribution under the Act. *See* 2 U.S.C. § 431(8)(B)(i) and 11 C.F.R. § 100.74.

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1 There is no information connecting the former Speaker's alleged payments to Burnham
2 Strategies to any work that the company or Mr. Hahn may have done for his son's campaign.
3 Complainant merely speculates that the former Speaker's House disbursements reports
4 disclosing payments to Burnham Strategies may have been for work done on the Ethan Hastert
5 campaign. The complaint states that "If the former-Speaker paid Burnham Strategies to perform
6 communications services for his son's campaign as part of this arrangement, these payments are
7 an in-kind contribution from father to son." Complaint, at 4 (emphasis added). However, the
8 complaint alleges no specific facts, other than the payments the former Speaker made to
9 Burnham Strategies, and these facts, standing alone, do not imply that any of these payments
10 were for work done for Ethan Hastert's campaign. Therefore, the complaint did not allege
11 "sufficient specific facts" that, if proven, would constitute an excessive in-kind contribution. *See*
12 MUR 5342 (U.S. Chamber of Commerce, *et al.*) (no reason to believe finding when the
13 complaint did not allege sufficient specific facts that, if proven, would constitute prohibited
14 corporate expenditures). In addition, the response maintains that the complaint's allegations that
15 the expenditures by former-Speaker Hastert constitute in-kind contributions to his son's
16 campaign are not based on any factual support and should be "disregarded." Response, dated
17 May 4, 2010, at 2, fn. 1. Based on the foregoing, it does not appear that Brad Hahn or J. Dennis
18 Hastert made an excessive in-kind contribution to the Committee or Ethan Hastert in violation of
19 2 U.S.C. § 441a(a)(1), nor does it appear that Ethan Hastert for Congress Committee and Larry
20 Nelson, in his official capacity as treasurer and Ethan Hastert received excessive in-kind
21 contributions from Brad Hahn or J. Dennis Hastert in violation of 2 U.S.C. § 441a(f), and that the
22 Committee failed to disclose such contributions in violation of 2 U.S.C. § 434(b)(2).

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1 In summary, there is no reason to believe Ethan Hastert for Congress Committee and
2 Larry Nelson, in his official capacity as treasurer, or Ethan Hastert violated 2 U.S.C. §§ 441a(f)
3 and 441b(a), or that Ethan Hastert for Congress Committee and Larry Nelson, in his official
4 capacity as treasurer, violated 2 U.S.C. § 434(b)(2). There is no reason to believe Burnham
5 Strategies Group, LLC, Brad Hahn or J. Dennis Hastert violated 2 U.S.C. § 441a(a)(1). There is
6 no reason to believe Burnham Strategies Group, LLC violated 2 U.S.C. § 441b(a).

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